

Exhibit 3

CONFIRMED FILE DATE: 2/8/2011

RECORDERS MEMORANDUM
This instrument is of poor quality
at the time of imagingCAUSE NO. 2011 08168

58

SPARK ENERGY GAS, LP

Plaintiff,

v.

TOXIKON CORPORATION,

Defendant

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

113 JUDICIAL DISTRICT**PLAINTIFF'S ORIGINAL PETITION**

Plaintiff, Spark Energy Gas, LP complains of Defendant, Toxikon Corporation, and respectfully shows the Court as follows:

I. DISCOVERY LEVEL

1. Discovery should be conducted pursuant to Level 2 of Texas Rule of Civil Procedure 190.3.

II. PARTIES

2. Plaintiff, Spark Energy Gas, LP ("Plaintiff" or "Spark Energy"), is a partnership organized under the laws of the State of Texas, with its principal place of business at 2105 City West Boulevard, Suite 100, Houston, Texas 77042.

3. Defendant Toxikon Corporation ("Defendant" or "Toxikon") is a Massachusetts corporation registered to and doing business in Texas, with its principal place of business at 15 Wiggins Avenue, Bedford, Massachusetts 01730. Defendant may be served with process through its registered agent in the State of Texas, Stephen Mohan, at 5962 Negley Drive, Kyle, Texas 78640.

FILED
Chris Daniel
District Clerk

FEB - 8 2011

Time: _____
Harris County, TexasBy _____
Deputy

8932586

III. VENUE, JURISDICTION AND CONDITIONS PRECEDENT

4. Venue is proper in Harris County, Texas, pursuant to Chapter 15.002 of the Texas Civil Practices and Remedies Code because all or a substantial part of the events or omissions and damages giving rise to Plaintiff's claims occurred in Harris County, Texas, and in the alternative because Plaintiff resides in Harris County, Texas.

5. Defendant is registered to and regularly conducts business in the State of Texas and maintains an agent for service of process in Texas. Further, Defendant entered into a contract performable in Texas.

6. The damages sought in this lawsuit are within the jurisdictional limits of this Court.

7. All conditions precedent to the filing of this lawsuit have occurred or transpired.

IV. FACTUAL BACKGROUND

8. Spark Energy provides natural gas services to retail customers. Spark Energy has provided natural gas to Toxikon under two contracts. On or about May 8, 2007, Spark Energy entered into a Natural Gas Sales Agreement with Toxikon, which was effective from June 1, 2007 through May 31, 2010. On or about May 9, 2007, Spark Energy entered into a second Natural Gas Sales Agreement (the "Contract") with Toxikon. The Contract was effective from June 1, 2010 through May 31, 2012. A true and correct copy of the Contract is attached hereto as "Exhibit A."

9. Under the terms of the two agreements executed in May 2007, Spark Energy agreed to provide fixed quantities of natural gas, at a fixed price, to meet Toxikon's monthly demand from June 2007 through May 2012. This fixed price arrangement enabled Toxikon to avoid the financial uncertainties associated with variable or fluctuating prices for natural gas.

Toxikon, among other things, agreed to take the gas provided to it, and to pay the amounts invoiced for the gas by the due date stated in the Contract.

10. From June 2007 through May 31, 2010, Spark Energy provided natural gas to Toxikon under the first contract. Spark Energy began providing natural gas to Toxikon under the second Contract on June 1, 2010, and continued through August 2010. Toxikon was invoiced on a monthly basis for the gas provided by Spark Energy. Thereafter, Toxikon refused to take gas as required by the Contract and refused to pay any invoices after May 2010.

11. The Contract provides that in the event of an uncured default, Spark Energy is entitled to terminate and liquidate the Contract, calculate the liquidated amount owed by Toxikon with reference to the Contract price and market price, discounted to present value, and to determine a settlement amount by calculating the gains, losses, and costs (including attorneys' fees) incurred as a result of liquidation. Spark Energy determined that the settlement amount pursuant to the Contract was \$301,124, exclusive of attorney's fees and costs associated with pursuing this lawsuit. The basis for this amount is set forth in the Affidavit attached hereto as "Exhibit B."

12. After informal attempts to obtain payment failed, on November 11, 2010, Spark Energy sent Toxikon a Notice of Default notifying Toxikon that an Event of Default had occurred under section 8 of the Contract, and demanding the settlement amount of \$301,124 if the default was not cured within ten (10) days. After Toxikon failed to cure the default, Spark Energy sent a second letter to Toxikon on December 1, 2010 requesting immediate remittance of \$301,124. Despite this demand, Toxikon failed to pay this or any outstanding amounts owed to Spark Energy. On January 18, 2011 Spark Energy sent a final demand letter to Toxikon again requesting payment within ten (10) days of the \$301,124 owed by Toxikon under the Contract.

13. Toxikon has failed to pay any of the settlement amount owed to Spark Energy under the Contract.

V. CAUSES OF ACTION

Each of the following causes of action are alleged as alternative pleadings.

Breach of Contract

14. Plaintiff incorporates the paragraphs above as if fully restated herein.

15. The Natural Gas Sales Agreement is an enforceable contract between Spark Energy and Toxikon.

16. Spark Energy fully performed all of its obligations under the Contract, including contracting with third-parties for and obtaining the requisite supply of natural gas to satisfy Toxikon's monthly demand, and delivering natural gas to Toxikon in the agreed-upon amounts.

17. Toxikon failed to perform its obligations under the Contract by refusing to make timely payments due under the Contract and refusing take and pay for the natural gas as required by the Contract.

18. Spark Energy provided Toxikon with Notice of Default and a sufficient opportunity to cure, which Toxikon failed to do.

19. Spark Energy suffered damages as a result of Toxikon's breach.

20. Pursuant to the terms of the Contract, Spark Energy is entitled to the settlement amount of \$301,124 from Toxikon.

Attorneys' Fees

21. Plaintiff incorporates the paragraphs above as if fully restated herein.

22. Plaintiff has presented a written demand to Defendant for payment of its obligations under the Contract. More than thirty (30) days have passed after the date of the demand for payment, and Defendant has failed to pay the amounts owed.

23. As a result of the above and foregoing, Plaintiff has employed the law firm of Baker & Hostetler LLP to prosecute its claims against Defendant. Pursuant to the Texas Civil Practice and Remedies Code Sections 38.001 and 38.002, *et seq.*, Plaintiff is entitled to recover reasonable and necessary attorneys' fees from Defendant.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Spark Energy Gas, LP prays that upon trial of this matter, it be granted all of the relief requested herein, including actual damages, pre-and post-judgment interest, reasonable and necessary attorneys' fees, and all costs and expenses associated with the prosecution of these claims. Plaintiff further prays for all other relief, legal and equitable, to which it is justly entitled.

Respectfully submitted,

BAKER & HOSTETLER LLP

By: 

Glen Shu

State Bar No. 00797429

Joshua C. Thomas

State Bar No. 24066185

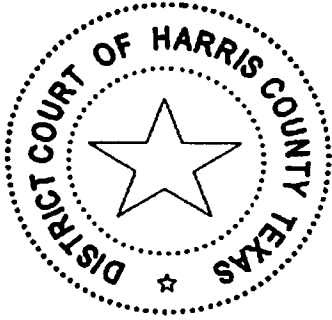
1000 Louisiana, Suite 2000

Houston, Texas 77002

Telephone: (713) 751-1600

Facsimile: (713) 276-1626

ATTORNEYS FOR PLAINTIFF



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this March 24, 2011

Certified Document Number: 47787018 Total Pages: 5

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

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Patriot Energy

1-781-376-0538

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CONFIRMED FILE DATE: 2/8/2011

SPARK ENERGY GAS, L.P.
3810 BRIARPASS
Houston, TX 77042
Phone: 1-877-628-0427

Customer Name: Toulson Corporation
Order Number: Dorder Williams
Address: Multiple
Telephone: 781-876-0330 Fax: 781-876-1130
Billing Contact: Dorder Williams
Billing Address: 15 Wiggins Avenue Bedford, MA 01730
Telephone: 781-876-0330 Fax: 781-876-1130

Type: Non-Daily ☒ New ☐ Renewal ☐ Amendment
Term: From June 1, 2010 to May 31, 2012
Non-Daily Customer Read Date: From _____ to _____
Utility: KeySpan **Rate:** TGP
Monthly Demand Quantities (MDO) in Dth:

January	2,300	March	2,300	May	1,775	July	1,000	September	1,400	November	2,300
February	4,500	April	2,400	June	1,600	August	1,400	October	1,700	December	3,100

Price: ☒ Fixed \$ 12.000 /Dth **Total:** 28,767
☐ NYMEX Plus: _____ /Dth
Price Date: 05/09/07

Gas Rate Whole Adjustment: Customer will pay the selected Price for all Gas delivered to Customer's storage at the Utility city gate up to 110% of the MDO. Customer will pay the Gas Duty and as plus \$0.12 /Dth for all natural gas delivered to Customer's account in excess of 110% of the MDO. If Customer uses less than 50% of the MDO, then (i) if the Gas Duty Index is greater than the Price, Spark Energy Gas, L.P. will credit Customer's account on a prorata basis by subtracting the Price from the Gas Duty Index of the deficient quantity, and (ii) if the Gas Duty Index is less than the Price, Spark Energy Gas, L.P. will debit Customer's account on a prorata basis by subtracting the Gas Duty Index from the Price of the deficient quantity.

The Gas Duty Index: TGP

Spark Energy Gas, L.P. and Customer will purchase 100% of the natural gas requirements of personal service locations at the Utility city gate. The Prices listed above are based on market conditions as of the Price Date and may be adjusted by Spark Energy Gas, L.P. in select market conditions as of the Gas Use Agreement is accepted by Customer. Prices are exclusive of Utility distribution charges and taxes. Offered volumes will be adjusted for Utility line loss, where applicable.

Customer Address (if different from above): 15 Wiggins Avenue Bedford, MA 01730
Utility Account Number: 400017432 **Rate:** GCL
Utility Address (if different from above): 15 Wiggins Avenue Bedford, MA 01730
Utility Account Number: 400017432 **Rate:** GCL
Utility Address (if different from above): _____
Utility Account Number: _____
Utility Address (if different from above): _____
Utility Account Number: _____

By signing below, Customer, through its duly authorized representative, agrees to the terms on this page and the Terms of Service on the reverse side, which together form the Agreement. If there is not enough space to list all service locations, additional pages may be attached. I certify that I have read and understood the terms and conditions on both sides of this page, and that the customer, credit, service location and Utility account information provided for Customer's use is correct. Customer authorizes Spark Energy Gas, L.P. to receive Customer's payment and related information from its Utility. This agreement will be effective when signed by both parties.

Customer Signature: [Signature] **Print Name:** Jason A. Harker **Date:** 5-9-07
Spark Energy Gas, L.P. Signature: [Signature] **Print Name:** Ken Zlober **Date:** 5-9-07

Transaction: **Entry Date:** **Entry Verified by:** **Price Verified by:** **Marked:** **Credit:**
Gas Use Agreement

EXHIBIT

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Patrolot Energy

SPARK ENERGY GAS, L.P.

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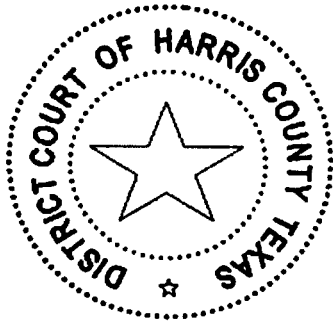
Customer's LDC may charge a fee for changing national gas suppliers to provide national gas services to a meter or group of meters. It is important that Customer's LDC be notified of any change in national gas supplier as soon as possible. Customer's LDC may charge a fee for changing national gas suppliers to provide national gas services to a meter or group of meters. It is important that Customer's LDC be notified of any change in national gas supplier as soon as possible. Customer's LDC may charge a fee for changing national gas suppliers to provide national gas services to a meter or group of meters. It is important that Customer's LDC be notified of any change in national gas supplier as soon as possible.

14. Binding Agreement. This Agreement will have no binding on the purchaser and permitted assignees of the Property, provided that Customer may not assign this Agreement, nor any of its rights or obligations, without the written consent of the Seller, which consent will not be unreasonably withheld, conditioned or delayed. This Agreement may be assigned in any number of counterparts, each of which is an original document, and all of which, together constitute one Agreement. This Agreement is governed by New York law.

113. Defendant Lind has written (1) a book titled "The Gay and Lesbian Movement in America," which contains a history of the gay and lesbian movement in America, and (2) a book titled "The Gay and Lesbian Movement in America," which contains a history of the gay and lesbian movement in America. Defendant Lind has written (1) a book titled "The Gay and Lesbian Movement in America," which contains a history of the gay and lesbian movement in America, and (2) a book titled "The Gay and Lesbian Movement in America," which contains a history of the gay and lesbian movement in America.

[illegible]

10. Limitations: Neither Party will be liable to the other Party for any consequential, punitive or punitive damages or special consequences arising from the non-performance, breach or breach of warranty under this Agreement, no delay or failure by a party to exercise any right or remedy to which it may be entitled or to which it may be entitled by or under any law, contract or otherwise. All rights and remedies shall be deemed to be waived by a party to the extent of any such limitation. The parties agree that the limitation of damages and consequential damages is a fair and equitable limitation of damages and consequential damages and is not unconscionable or otherwise unenforceable. (Amended by operation of law, under contract or otherwise).



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this March 24, 2011

Certified Document Number: 47787019 Total Pages: 2

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

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CAUSE NO. 2011 08168

SPARK ENERGY GAS LP

Plaintiff,

v.

TOXIKON CORPORATION,

Defendant

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

113 JUDICIAL DISTRICTAFFIDAVIT OF DREW HENDERSON

STATE OF TEXAS

COUNTY OF HARRIS

1. My name is Drew Henderson. I am over the age of 21 years, of sound mind, and am in all respects competent and qualified to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I am Director of Retail Gas Structuring and Pricing for Spark Energy Gas, LP ("Spark Energy"), Plaintiff in the above-styled lawsuit.
2. I have reviewed the factual statements in Plaintiff's Original Petition and these statements are all true and correct to the best of my knowledge.
3. Spark Energy entered into two Natural Gas Sales Agreements with Toxikon Corporation ("Toxikon"), Defendant in the above-styled lawsuit. The first agreement was executed on or about May 8, 2007, and was effective from June 1, 2007 through May 31, 2010. The second Agreement was executed on or about May 9, 2007, and was effective from June 1, 2010 through May 31, 2012. A true and correct copy of the second Natural Gas Sales Agreement is attached to Plaintiff's Original Petition as "Exhibit A."
4. Pursuant to these agreements, Spark Energy was to provide natural gas at a fixed price to meet Toxikon's monthly demand for the duration of the agreements. To fulfill Toxikon's monthly demands under the Natural Gas Sales Agreements, Spark Energy contracts with third-parties to obtain the requisite supply of natural gas, and delivers the gas to Toxikon in the agreed-upon amounts. Toxikon agreed, among other things, to timely pay for the gas as invoiced.

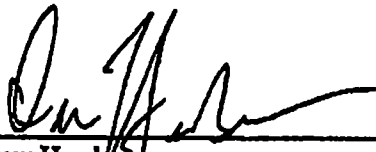


5. From June 2007 through May 31, 2010, Spark Energy performed under the first (May 8, 2007) Natural Gas Sales Agreement by obtaining the requisite supply of gas, and delivering the gas to Toxikon. Toxikon accepted the gas and paid the amounts invoiced.
6. Spark Energy performed under the second Natural Gas Sales Agreement (Exhibit A) by obtaining the requisite supply of natural gas to meet Toxikon's demand, and began providing gas to Toxikon on or about June 1, 2010. Spark Energy continued providing gas to Toxikon through August 2010. Toxikon was invoiced on a monthly basis for the gas provided by Spark Energy. However, Toxikon refused to take gas as required by the Contract and refused to pay any invoices after May 2010.
7. The Natural Gas Sales Agreement (Exhibit A), at section 8, defines an "Event of Default" as, among other things, "the failure of either Party ... to make any payment required by the applicable due dated and the failure is not remedied within five (5) days of receipt of written demand for cure."
8. The Natural Gas Sales Agreement (Exhibit A), at section 9, provides that in the event of a continuing Event of Default, the non-defaulting Party may:
 - (ii) upon written notice at least one day in advance, accelerate any amounts owing between the Parties and terminate and liquidate any agreements between the Parties; (iii) determine a settlement amount for each agreement by calculating the gains, losses and costs (including reasonable attorney's fees and the costs of obtaining, maintaining and liquidating commercially reasonable hedges) incurred as a result of the liquidation, discounted to present value at 6% per annum....
9. Toxikon failed to make payments required by the applicable due dates, beginning in May 2010. Spark Energy attempted to obtain payments from Toxikon. After these attempts failed, Spark Energy calculated a settlement amount pursuant to Section 9 of the Natural Gas Sales Agreement, as follows:
 - a. Spark Energy calculated the cost total cost of obtaining the requisite supply of natural gas for the duration of the primary term, through May 2012.
 - b. The total cost was divided by the contracted volume (i.e., the sum of the Monthly Demand Quantities ("MDQ")) to obtain a total cost per Dekatherm (dth).
 - c. The total cost per dth was subtracted from the fixed contract Price per dth. This value is the difference in the contract Price and Spark Energy's actual cost, per dth. This difference in unit prices was multiplied by the contracted volume (total MDQ) for the Primary Term to obtain the total liquidated value of the contract.

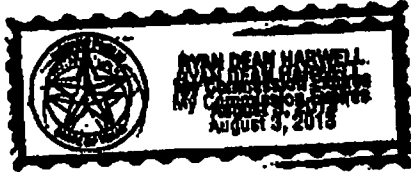
- d. The total liquidated value was discounted to present value using a discount rate of 6% per annum, per Section 9 of the Natural Gas Sales Agreement.
 - e. The resulting settlement amount is \$301,124. This amount does not include attorneys' fees.
- 10. On November 11, 2010, Spark Energy sent Toxikon a Notice of Default notifying Toxikon that an Event of Default had occurred under section 8 of the Contract, and demanding the settlement amount of \$301,124 if the default was not cured with ten (10) days. Toxikon failed to cure the default.
 - 11. On December 1, 2010, Spark Energy sent a second letter to Toxikon requesting immediate remittance of \$301,124. Toxikon again failed to pay the settlement amount.
 - 12. On January 18, 2011, Spark Energy sent a final demand letter to Toxikon again requesting payment of \$301,124 within ten (10) days. Toxikon continues to refuse to pay this or any amount owed to Spark Energy.
 - 13. Spark Energy has complied with the Natural Gas Sales Agreement (Exhibit A) by obtaining and providing natural gas to Toxikon, by calculating an appropriate settlement amount pursuant to Section 9 of the Agreement, by timely notifying Toxikon of the Event of Default, and by allowing Toxikon well over ten days in which to cure the default.

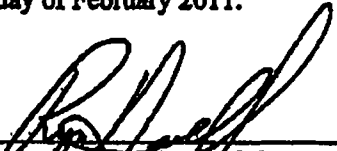
[Signature Follows on Next Page]

Further affiant sayeth not.


Drew Henderson

Subscribed and sworn to before me this 3RD day of February 2011.




Notary Public - State of Texas



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this March 24, 2011

Certified Document Number: 47787021 Total Pages: 4

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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